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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

Toll Free Service Access Codes

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CC Docket 95-155

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The Personal Communications Industry Association ("PCIA"),<sup>1</sup> by its attorneys, respectfully submits its comments regarding the Commission's *Notice of Proposed Rulemaking* in the above-captioned proceeding.<sup>2</sup> In the *Notice*, the Commission seeks comment on a wide variety of proposals to address the efficient allocation of toll-free resources and to regulate the implementation of future toll-free telephone numbers. As discussed herein, the Commission should develop rational policies to assure a smooth transition to future toll-free numbering resources. It should not, however, impose

<sup>2</sup> FCC No. 95-419 (Oct. 5, 1995) ("*Notice*").

intrusive regulations that restrict the availability of toll-free numbering resources for wireless carriers or other industry segments.

## I. INTRODUCTION AND SUMMARY

In its *Notice*, the Commission requested comment on several matters associated with the use of toll-free numbering resources. Specifically, the Commission sought comment on proposals to address four primary issues: (1) the efficient allocation of toll-free telephone numbers;<sup>3</sup> (2) the deployment of new toll-free service access codes ("SACs");<sup>4</sup> (3) the practices of toll-free number warehousing and hoarding;<sup>5</sup> and (4) the rights of existing toll-free "vanity" number holders to obtain equivalent vanity numbers in future access codes.<sup>6</sup>

PCIA appreciates the Commission's steps in working with the industry and vendors to expedite the implementation date for the 888 service access code. Nonetheless, PCIA is concerned that the *Notice* presumes the need for continuing intensive Commission regulation of the future use of toll-free numbers. The current toll-free number shortage has resulted not from an absence of adequate regulation, or an inefficient allocation of toll-free resources, but rather reflects legitimate market

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<sup>3</sup> *Notice*, ¶¶ 13-21.

<sup>4</sup> *Id.*, ¶¶ 23-25, 27-31.

<sup>5</sup> *Id.*, ¶¶ 33-34.

<sup>6</sup> *Id.*, ¶¶ 41-46.

demand and the availability of innovative new services. The current situation in no way creates a need for intrusive future regulation.

In particular, PCIA strongly opposes any requirement that would obligate service providers to use Personal Identification Number ("PIN") technology to allocate toll-free resources. Such policies would be discriminatory, anticompetitive, and harmful to consumers, and would unreasonably presume that lower volume uses of toll-free services are inherently of lower value. Similarly, PCIA also is opposed to any proposal that would partition service access codes for particular toll-free providers as a means of protecting the rights of existing toll-free "vanity" number holders.

Partitioning service codes is not compelled by technical requirements, and would be discriminatory and contrary to the Commission's policy of toll-free number portability. PCIA also is concerned about the impact of other Commission proposals regarding the allocation of vanity numbers on paging carriers, although these proposals cannot be fully addressed because the proposed definition of such numbers does not permit a reasonable approximation of the extent of their use. Available information, however, suggests that granting extensive rights of first refusal could impede the efficient allocation and usage of 800 codes.

Rather than regulating the use of toll-free numbers, the Commission's primary focus should be on minimizing the need for intensive government oversight by assuring that procedures are in place to assure a smooth transition to new toll-free SACs. In this context, the Commission should work with existing industry committees to develop

and implement transition procedures and establish a date certain by which all network switches should be capable of handling 8XX toll-free codes. PCIA generally supports the Commission's efforts to reduce practices that impede a market-driven allocation of toll-free numbers, although it does not believe that sweeping regulations are required to address hoarding and warehousing toll-free numbers. The increased supply of toll-free numbers in the new access codes, coupled with the availability of the Commission's complaint process to address instances of abusive conduct, will obviate the need for new regulation. Additionally, PCIA concurs with the Commission's conclusion that certain time intervals in the number assignment process may be shortened, although substantially shortening these intervals could lead to an increase in misdialed numbers.

## **II. INTRUSIVE REGULATION OF TOLL-FREE RESOURCES IS UNNECESSARY, SINCE TOLL-FREE USAGE LEVELS REFLECT LEGITIMATE MARKET DEMAND RATHER THAN INEFFICIENCY.**

### **A. The Current Scarcity Is Temporary and Could Be Avoided in the Future Through Careful Planning.**

In the *Notice*, the Commission implicitly assumes that existing toll-free numbers are not being efficiently utilized, that this inefficient utilization is the cause of the current scarcity of 800 numbers, and that additional regulation of some kind is needed to address this problem. In reality, however, the growth of 800 usage levels reflects the availability of valuable new services that are highly appealing to small businesses and individuals. Moreover, the current scarcity has resulted from the absence of a process to anticipate demand and transition smoothly to new toll-free SACs. Additional

regulation is not necessary because any existing scarcity of toll-free numbers will largely be eliminated by the establishment of an adequate plan to transition to subsequent access codes and through the availability of approximately 56 million individual assignable numbers contained in the seven future toll-free codes reserved by the Industry Numbering Committee ("INC").<sup>7</sup>

**B. The Commission Should Not Assume That Less Frequently Used Numbers Are Not Valuable.**

PCIA is concerned that the Commission appears to assume that a more intensively used toll-free number is more valuable than one that is used less frequently.<sup>8</sup> This assumption is not accurate, and dramatically understates the value of a toll-free number to an individual or small business. The Commission must recognize that many small businesses depend on toll-free services to compete against larger rivals or for their survival as a small entity, and that any restriction on the availability of a toll-free number to a "less intensive" user would unfairly interfere with the competitive marketplace.<sup>9</sup> Similarly, many professionals, such as doctors and emergency

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<sup>7</sup> See *Personal Communications Industry Association's Proposed Approach for the Toll-Free Resource*, ¶ 3 (July, 1995) ("*PCIA's Proposed Approach*"). INC has reserved the numbers in the 888, 877, 866, 855, 844, 833, and 822 access codes for future toll-free service. Furthermore, the designation of a toll-free access code is dictated solely by marketing convenience; current network technology permits the selection of any area code for a toll-free SAC. *Id.*

<sup>8</sup> *Notice*, ¶ 21.

<sup>9</sup> For example, both a small bed and breakfast and a large hotel chain may use a toll-free number to receive reservations. Even though the hotel chain will probably receive a much higher call volume, the bed and breakfast owner highly values its toll-  
(continued...)

repairman, have toll-free paging numbers because of a vitally important need to be easily contacted regardless of their location. Accordingly, the Commission cannot properly judge that these less volume-intensive uses are automatically less valuable than more intensive uses by larger companies.

Against this background, the Commission should not take any steps to limit the availability of toll-free numbers to particular types of service providers based on usage levels, technology, or similar criteria. Any measures that would effectively constrain the use of toll-free numbers for new technology and services would be entirely inconsistent with the public interest.<sup>10</sup> In particular, as discussed below, the Commission should not segregate paging or other wireless toll-free service providers in particular service access codes and/or mandate or encourage the use of PIN codes in conjunction with relatively low volume uses.<sup>11</sup>

Instead of adopting additional regulations or rationing toll-free number use based on level of usage, the Commission should focus its efforts on developing procedures

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<sup>9</sup>(...continued)

free number because it needs that number to compete. Similarly, a small business executive may need to spend many days traveling in order to support his business, and may rely heavily on the use of an 800 paging number or personal 800 number. In contrast, a large business would likely have a number of field offices.

<sup>10</sup> The Commission has consistently expressed the need for technology- and service-neutral numbering policies. See, e.g., *In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois*, 10 FCC Rcd 4596 (1995) ("*Ameritech Order*"); *In the Matter of Administration of the North American Numbering Plan, Report and Order*, CC Docket No. 92-237, FCC 95-283 (July 13, 1995) ("*NANP Order*").

<sup>11</sup> Notice, ¶ 21.



under which the industry can transition smoothly to new toll-free access codes. In this regard, PCIA endorses the Commission's tentative conclusion that all network switches in the U.S. should have the software needed to support the currently reserved toll-free codes installed by February 1997, provided that the Commission does not mandate the type of technology used to implement these new codes. It should also foster the development of readily understood, automatic transition procedures that the industry can follow when opening a new access code. Accordingly, PCIA is concerned that the Commission's "circuit breaker" model is an unnecessarily complex solution aimed at correcting temporary problems associated with the supply and demand of existing 800 toll-free numbers.<sup>12</sup> The Commission should effectuate its policies by working with industry standard setting bodies, such as the Industry Numbering Committee and/or the newly formed North American Numbering Committee ("NANC"). By coordinating its efforts through industry working groups, the Commission can forego extensive

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<sup>12</sup> PCIA opposes the Commission's proposed "circuit breaker" model both as a method to "trigger" the deployment of additional SACs and to regulate the supply of toll-free numbers. Instead, it suggests that both these issues could be addressed by instituting simpler mechanisms to ensure that additional toll-free access codes are available when necessary. PCIA recommends that the Commission adopt a simple "trigger" mechanism whereby the deployment of a new SAC automatically requires that the next SAC become available within a predetermined time interval. A "circuit breaker" control aimed at regulating supply of toll-free numbers is problematic because it may well impede a carrier's ability to meet market demand for its services. For example, if a carrier runs a promotion for personalized 800 numbers and the carrier has significant demand, the proposed "circuit breaker" could limit the carrier's ability to meet that demand for service.

regulation in favor of market action designed to assure the continued availability of toll-free resources.

**III. THE COMMISSION SHOULD NOT REQUIRE OR COERCE CERTAIN SERVICE PROVIDERS TO USE PERSONAL IDENTIFICATION NUMBER ("PIN") TECHNOLOGY IN CONJUNCTION WITH TOLL-FREE NUMBERS.**

In the *Notice*, the Commission sought comment on the possible use of Personal Identification Number technology in conjunction with toll-free numbers. Specifically, the Commission asked for comment on the feasibility of plans to encourage the use of a PIN system for at least "some" services, such as paging and personal toll-free service, that make "low use" of assigned toll-free numbers.<sup>13</sup>

PCIA is concerned that the Commission's proposals for "encouraging" the use of PIN numbers amount to a requirement, or at best a coercion, for the use of PIN numbers. PCIA strongly opposes any effort by the Commission to require or coerce the use of PIN numbers for certain toll-free service providers, where such use is not driven by market demand. Such a plan would be an inappropriate means by which to control the utilization of toll-free resources because it would affect the competitive balance in the market and limit customers' service options.<sup>14</sup> Indeed, as the Commission itself pointed out, requiring some service providers to use PIN technology

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<sup>13</sup> *Id.*, ¶¶ 20-21.

<sup>14</sup> *See generally, PCIA's Proposed Approach.*

would place those providers at a competitive disadvantage and disrupt business plans.<sup>15</sup>

The burdens of a mandatory or coercively encouraged PIN dialing system would fall particularly heavily on the paging industry, as a PIN number requirement would hinder the ability to compete with other messaging services and Personal Communication Services ("PCS"). Specifically, PIN technology would require the dialing of additional digits to access a paging system's network. In addition to the competitive imbalances created by making certain services less attractive, such a requirement also would result in a technically inferior paging product, because PINs would limit customers' access to advanced paging features available through signalling system 7 ("SS7") and future PCS services.<sup>16</sup> Furthermore, mandatory use of PIN technology will result in less efficient use of public switched network resources. PIN dialing arrangements take more time for network completion, use more network resources, and therefore cost more than direct inward dial options. Finally, the availability of new toll-free SACs will eliminate any perceived need to use PIN technology to conserve numbers. Paging carriers and other service providers will utilize PIN numbers where it is technically and commercially feasible and is consistent

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<sup>15</sup> Notice, ¶ 21.

<sup>16</sup> In addition to preventing the delivery of Advanced Intelligent Network Services, PIN technology also precludes a customer from receiving highly desirable paging and voice mail services. See *PCIA's Proposed Approach*, ¶ 4.

with consumer demand. They must not be forced to do so based on regulatory assessments of the value of particular services.

**IV. THE COMMISSION SHOULD NOT PARTITION  
TOLL-FREE ACCESS CODES TO PROTECT VANITY NUMBERS.**

**A. The Commission's Definition of "Vanity" Numbers  
Is Too Broad To Permit Meaningful Comment.**

In the *Notice*, the Commission requested that parties identify the quantity of existing toll-free "vanity" numbers, which it defined as including both numbers for which the associated letters spell a valuable name or word *and* "any numbers in which the holders have a particular interest, be it economic, commercial, or otherwise."<sup>17</sup> The Commission also sought comment on several alternative proposals to address the rights of current vanity number holders. Specifically, it proposed: (1) granting existing vanity number holders a right of first refusal on the equivalent number in subsequent toll-free SACs; (2) extending existing vanity number holders a more limited right of refusal that would bar any competitor of the current holder from obtaining an equivalent toll-free number; and (3) partitioning toll-free service so that business entities and the majority of vanity numbers would use the existing 800 code, and personal and paging users would be assigned a specific toll-free code.<sup>18</sup>

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<sup>17</sup> *Notice*, ¶ 35.

<sup>18</sup> *Id.*, ¶¶ 40-46.

Under the definition in the *Notice*, virtually any existing toll-free number could be considered a "vanity" number, because any commercial entity could assert that it has an economic (or other) interest in not changing its existing toll-free number in a subsequent access code. The lack of a workable vanity number definition prevents a realistic estimate of the total number of existing vanity numbers and precludes meaningful comment on any solution to address the rights of current vanity number holders. In addition, the Commission's broad classification of vanity numbers not only thwarts the Commission's goal of efficiently allocating future toll-free resources -- any purported interest in retaining an existing toll-free vanity number is not based upon an increased capacity requirement, but rather on the economic interests of reducing customer confusion and limiting unfair competition -- but also renders it difficult to assess any proposal to address the allocation of vanity numbers.<sup>19</sup>

Because of the Commission's broad definition of vanity numbers, PCIA cannot accurately estimate the quantity of vanity numbers held by its members at this time. Moreover, at this time, PCIA has serious reservations about granting vanity holders an absolute or even limited right of first refusal. PCIA will carefully review the comments in this proceeding to determine the scope of vanity numbers that industry groups seek to protect, and may comment more fully on any solutions to address the problems faced by existing vanity number holders. In any event, the Commission

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<sup>19</sup> As recognized by the Commission, the merits of a solution depend on the scope of vanity numbers that current holders seek to protect. *Id.*, ¶ 40.

should adopt a more narrow definition of vanity toll-free numbers, regardless of whatever protection is afforded to existing vanity number holders.

**B. Segregating Access Codes Would Discriminate Against Paging Providers.**

PCIA strongly opposes any proposal that would segregate access codes in a way that would relegate paging customers to particular toll-free access codes. Restricting paging customers to segregated access codes is inherently discriminatory because it would confer significant competitive advantage on carriers placed in the 800 access code, impose disproportionate portions on carriers segregated to new SACs, and fail to strike an optional balance among the Commission's objectives stated in the *Notice*.<sup>20</sup> Moreover, such a policy would not only require paging customers to "give back" their existing 800 telephone numbers, but also would limit these customers to less familiar, and thus potentially less desirable, service access codes. In addition, such segregation would be unreasonable because no technical or capacity reasons exist that compel requiring paging customers to offer toll-free services under different terms and conditions than other service providers. Finally, as the Commission mentioned in the *Notice*, partitioning toll-free access codes substantially limits toll-free number portability by restricting a user's choice of telephone number based upon how that

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<sup>20</sup> See, *Ameritech Order*, ¶¶ 25-29; 34-35.

number is used.<sup>21</sup> PCIA urges the Commission to refrain from adopting any partitioning alternative as a means of protecting the rights of current vanity holders.<sup>22</sup>

**V. THE DEPLOYMENT OF ADDITIONAL TOLL-FREE SACS REDUCES THE NEED FOR REGULATING WAREHOUSING AND HOARDING BEYOND THE COMMISSION'S EXISTING COMPLAINT PROCESS.**

In the *Notice*, the Commission tentatively concluded that the practice of toll-free number warehousing is an unreasonable practice under Title II of the Communications Act, and accordingly sought comment on several proposals designed to reduce this practice and the related practice of toll-free number hoarding.<sup>23</sup> Specifically, it proposed imposing a permanent cap on the quantity of reserved numbers and penalizing RespOrgs with an appropriate fine and/or de-certification, if necessary, for violating any warehousing controls that it may adopt.<sup>24</sup> In addition, the Commission asked

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<sup>21</sup> *Notice*, ¶ 46.

<sup>22</sup> In addition to its concerns over the Commission's vanity number proposals, PCIA believes that the Commission should protect a new toll free subscriber who obtains a toll-free number that translates to a high volume number in the 800 toll-free code. In order to protect such a user, PCIA suggests that all RespOrgs be required to report to the Commission the top ten percent of their 800 numbers with the highest usage. These numbers would then be removed from assignment for the first six months after the 888 access code is deployed in order to give the industry adequate opportunity to publicize the addition of the 888 code.

<sup>23</sup> *Id.*, ¶ 32-34.

<sup>24</sup> *Id.*, ¶ 33.

whether a penalty should be imposed on customers who are found to be hoarding toll-free numbers.<sup>25</sup>

Where authorized by statute, the Commission should investigate abuses that may unfairly interfere with the market's allocation of toll-free numbers. PCIA believes, however that any current problems with warehousing and hoarding are temporary and exist only because of the artificially-imposed scarcity of toll-free numbers resulting from inadequate planning for the transition to 888.<sup>26</sup> Since toll-free resources will become plentiful when the new access codes are deployed, the future incentive to either warehouse or hoard toll-free numbers should be largely eliminated. PCIA urges the Commission to consider whether sweeping regulations are truly needed and whether such regulations are a rational use of its increasingly limited resources, and suggests that individual instances of abusive practices can be better dealt with either informally by the staff or formally through the complaint process.

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<sup>25</sup> *Id.*

<sup>26</sup> Although PCIA cannot comment on the occurrence of warehousing and hoarding of toll-free numbers generally, such practices are not prevalent in the in the wireless industry, where usage has skyrocketed due to strong consumer demand for innovative new services.



**VI. CURRENT TIME INTERVALS FOR PROCESSING TOLL-FREE NUMBERS MAY BE SHORTENED, PROVIDED THAT THE NEW INTERVALS DO NOT SIGNIFICANTLY INCREASE THE OPPORTUNITY FOR MISDIALED NUMBERS AND CUSTOMER CONFUSION.**

The *Notice* proposes to shorten both the amount of time that a toll-free number may be held in any status before being assigned to working status and the amount of time before a toll-free number may be reassigned after it has been disconnected or canceled (*i.e.*, the "aging" process). To encourage rapid conversion of numbers to working status, the Commission specifically proposed to reduce: (1) the time period that a number can remain in reserved status from 60 days to 45 or 30 days; and (2) the time period that a number can be assigned, but not working, from 12 months to four months.<sup>27</sup> Similarly, the Commission also proposed to reduce: (1) the current six month period from disconnect to spare status to four months; and (2) the current 12 month period that a number can be suspended, but not reactivated, to four months.<sup>28</sup>

PCIA generally concurs with the Commission's tentative conclusion that the current time intervals may be unnecessarily long. Substantially shortening these time periods, however, may increase the frequency of misdialed numbers and customer confusion. PCIA therefore advocates that: (1) the time period in which a number may remain in reserved status be shortened to 45 days; and (2) the time period that a number can remain assigned, but not working, may be shortened to six months.

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<sup>27</sup> *Notice*, ¶ 18.

<sup>28</sup> *Id.*, ¶ 19.

Additionally, to address the Commission's concerns regarding the "aging" process, PCIA suggests that the Commission may: (1) reduce the time in which a number may be reassigned after it has been disconnected or canceled to four months; and (2) reduce the amount of time that a number may remain "suspended" to six months.<sup>29</sup> The Commission should recognize that reducing these time intervals any further may frustrate both toll-free service providers and users of toll-free service, since calling parties may not have sufficient time to alter their calling patterns.<sup>30</sup>

## VII. CONCLUSION

PCIA supports the Commission's efforts in working with industry to overcome the problems faced in transitioning to the 888 service access code. In the same vein, continued Commission involvement is appropriate in fostering a smooth transition to future toll-free resources. The Commission, however, should not overreact to existing scarcity problems, which resulted from inadequate planning and a proliferation of valuable new services, by instituting a regulatory scheme that would reduce competition

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<sup>29</sup> Some PCIA members believe that the "aging" process time intervals should not be reduced from the current intervals because of the practical considerations relating to number reassignment and the increased possibility of misdialed numbers. Moreover, consistent with PCIA's position that a virtually unlimited supply of numbers will exist with the deployment of the additional SACs, these members believe that number reassignment time periods should be driven by actual market demand rather than artificially imposed time intervals.

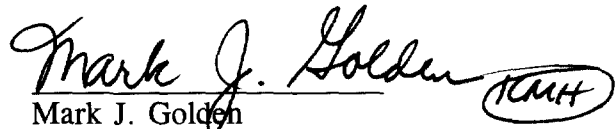
<sup>30</sup> For example, a paging customer that receives a toll-free number formerly belonging to a high volume catalogue retailer may receive a significant number of mistaken calls if the number was reactivated too quickly after having been disconnected.

and impede the delivery of new services. In particular, it should not take steps that would harm wireless carriers, such as requiring or coercing the use of PIN technology or by placing some wireless carriers in segregated access codes access codes.

To promote efficient use of toll-free numbers, the Commission should reduce the current aging, reservation, and suspension intervals, as long as the record shows that doing so would not cause an unacceptable increase in misdialed calls and customer confusion. Finally, the Commission should carefully consider whether new rules are needed to address warehousing and hoarding, or, whether with the availability of new toll-free resources, the incentive to engage in such practices will substantially diminish, making additional regulation unnecessary and harmful to the industry.

Respectfully submitted,

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